

## 9 FAM 42.83 Procedural Notes

(TL:VISA-183; 12-18-1998)

### 9 FAM 42.83 PN1 No Response to Packet 4 or Packet 4(a) or Refusal Under INA 221(g)

(TL:VISA-66; 9-30-92)

a. An applicant becomes liable to possible termination of registration if the applicant:

(1) Does not respond to the Packet 4 appointment notice by failing to appear for final visa application interview on the scheduled appointment date and fails to take further action on the case **within one year** of the scheduled interview; or

(2) Is refused at the interview under INA 221(g), and fails to provide the consular officer with evidence to overcome the refusal **within one year**; or

(3) Fails to comply with the Packet 4(a) instructions **within one year**.

b. If an applicant is liable for possible termination of registration, the post will take the following action:

(1) Clearly mark a large letter "T" in red on the appointment date on Form OF-224, Immigrant Visa Control Card, and all copies of Form OF-224, Immigrant Visa Control Card;

(2) Note the basis and date of possible termination on the Forms OF-224 and OF-224B; and

(3) Place the blue/yellow copies of Form OF-224B in the inactive group of the chronological (numerical control) file described in 9 FAM 42.52 PN3.3.

### 9 FAM 42.83 P2 Initiating Termination of Registration

(TL:VISA-66; 9-30-92)

If, after one year, the applicant does not request reinstatement of the application or has failed to overcome an INA 221(g) refusal, the post will:

(1) Send Form DSL-1045, Notice of Termination of Registration [see 9 FAM 42.83 Exhibit I];

(2) Mark the Form OF-224 or all copies of Form OF-224B and note thereon the date the Form DSL-1045 was sent; and

(3) Place the blue/yellow copies of Form OF-224B in a separate chronological file arranged by the date the Form DSL-1045 was sent.

## **9 FAM 42.83 PN3 Action if Reinstatement Requested**

(TL:VISA-66; 9-30-98)

If during the one-year period following the mailing of Form DSL-1045, Notice of Termination of Registration [see 9 FAM 42.83 Exhibit I], the applicant satisfies the consul that failure to pursue the application was for reasons beyond his or her control, the consul shall reinstate the application and petition.

### **9 FAM 42.83 PN3.1 Reinstating Cases for Documentarily Qualified Applicants**

(TL:VISA-66; 9-30-92)

*If* the applicant is documentarily qualified, the post will:

- (1) Update the background investigation (if more than 6 months old);
- (2) Move Form OF-224B to the "notified" group in the chronological file described in 9 FAM 42.52 PN3.3; and
- (3) When the investigation is completed and *the* priority date is current, request a visa number from the Department (CA/VO/F/I).

### **9 FAM 42.83 PN3.2 Reinstating Cases for Applicants Not Documentarily Qualified**

(TL:VISA-66; 9-30-92)

If the applicant requesting reinstatement of the case is not yet documentarily qualified, the post will:

- (1) Give the applicant a new Packet 3; and
- (2) Move the white copy of Form of 224B to the "notified" group in the chronological file described in 9 FAM 42.52 PN3.

## **9 FAM 42.83 PN4 Mailing Final Notice of Cancellation**

(TL:VISA-66; 9-30-92)

When one year has passed following the mailing of the Form DSL-1045, Notice of Termination of Registration, and the applicant has not established that a basis for reinstatement of registration exists, the post will take the following action:

- (1) Send the applicant Form DSL-1046, Final Notice of Cancellation of Registration [see 9 FAM 42.83 Exhibit II];
- (2) Retain Form OF-224 or the white copy of Form OF-224B for one additional year, noting on the form the date Form DSL-1046 was sent; and
- (3) Destroy the blue and/or yellow copies of Form OF-224B.

## **9 FAM 42.83 PN5 Disposition of Petitions/Documents in Terminated Cases**

### **9 FAM 42.83 PN5.1 Petitions Terminated under INA 203(g)**

*(TL:VISA-183; 12-18-1998)*

When a case is terminated under INA 203(g), posts shall take the following action to dispose of visa petitions:

- (1) Notify the petitioner that the petition was revoked under INA 203(g);
- (2) Destroy the petition and copies of supporting documents filed with the petition;
- (3) Return the labor certification to the prospective employer; and
- (4) Return original documents (i.e., birth, death, marriage, divorce certificates) to the petitioner (if filed with the petition), or to the beneficiary (if filed during the application process).

### **9 FAM 42.83 PN5.2 Pre-IMMACT 90 P3 and P6 Petitions**

*(TL:VISA-183; 12-18-1998)*

*IMMACT 90 provided for the conversion of employment-based petitions (P3 and P6) to the new E2 and E3 classifications, allowing a two-year period for such conversion. If the beneficiaries did not apply within the two-year period, the petitions have expired. In such cases, posts shall take the following action:*

- (1) *Return the labor certification, along with any attached documentation, to the employer or attorney or record;*
- (2) *Attach a memo with the following text:*

*"We are returning the enclosed labor certification (ETA 750A & B) which you filed on behalf of (name of beneficiary). The accompanying Form I-140 (petition, which you filed at the same time, has expired after a period of at least two years. During this two-year period, a visa number was available but the beneficiary failed to apply for an immigrant visa. The petition is part of a group of employment-based petitions which converted to another visa classification under the provisions of the Immigration Act of 1990. The petition has now expired and neither our office nor the Department of State is retaining any record of the petition. The labor certification is returned to you for appropriate action."*

### **9 FAM 42.83 PN5.3 Labor Certification Returned as Undeliverable**

*(TL:VISA-183; 12-18-1998)*

*If the labor certification is returned as undeliverable, post may destroy the certification and any attached documents. **Any significant original documents (i.e., birth, death, marriage certificates, etc.) should be returned to the petitioner or beneficiary (whomever submitted it).***

### **9 FAM 42.83 PN6 IVACS Procedures**

*(TL:VISA-16; 11-7-88)*

Posts with IVACS should follow the instructions for IVACS. [See FAM 9 PART IV Appendix D, "Automated Visa Services" and the IVACS User Reference Manual for more detailed IVACS procedures.]